Web Telephony, LLC. v. Verizon Communications, Inc. et al Doc. 6

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

WEB TELEPHONY, LLC.,
An Illinois corporation,

Plaintiff,

vs.

Verizon Communications, Inc., a Delaware corporation, AT&T Corp., a New York corporation, AT&T Inc., a Delaware corporation, EarthLink, Inc., a Delaware corporation, SunRocket Corp., a Delaware corporation, Vonage Holdings Corp., a Delaware corporation, and Vonage America, Inc., a Delaware corporation,

Defendants.

CASE NO. 2:07-CV-085-DF

DEFENDANT SUNROCKET'S ANSWER TO PLAINTIFF WEB TELEPHONY'S FIRST AMENDED COMPLAINT

Defendant SunRocket Corp. ("SunRocket") submits this answer ("Answer") in response to the First Amended Complaint ("FAC") filed in this action by plaintiff Web Telephony, LLC ("Web Telephony").

The numbered paragraphs below correspond to the numbered paragraphs of the FAC.

ANSWER

Introduction

1. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 1 of the FAC and therefore denies the same. SunRocket denies the remaining allegations contained in paragraph 1 of the FAC. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the allegations as they pertain to the other defendants and therefore denies the same.

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Jurisdiction and Venue

2. SunRocket admits that this is an action for patent infringement under the cited law of paragraph 2 of the FAC and that this Court generally has subject matter jurisdiction for this subject matter.

3. SunRocket admits that venue is proper but denies the remainder of the allegations contained in paragraph 3 of the FAC.

Plaintiff Web Telephony

4. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the FAC, and therefore denies the same.

The Patents

5. SunRocket admits U.S. Patent No. 6,445,694 (the "'694 Patent") was issued by the U.S. Patent and Trademark Office on September 3, 2002. SunRocket admits that U.S. Patent No. 6,785,266 (the "'266 Patent") was issued by the U.S. Patent and Trademark Office on August 31, 2004. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 of the FAC and therefore denies the same.

Defendants

Bell Atlantic Communications, Inc.

6. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the FAC and therefore denies the same.

AT & T

7. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the FAC and therefore denies the same.

Earthlink

8. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the FAC and therefore denies the same.

SunRocket

9. SunRocket admits the allegations contained in paragraph 9 of the FAC.

Vonage

10. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the FAC and therefore denies the same.

11. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the FAC and therefore denies the same.

Count 1 For Patent Infringement (‘694 Patent)

12. SunRocket repeats and realleges its responses to the allegations contained in paragraphs 1-11 in its response to paragraph 12 of the FAC as if more fully set forth herein.

13. SunRocket denies the allegations contained in paragraph 13 of the FAC.

14. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the FAC and therefore denies the same.

15. SunRocket denies the allegations contained in paragraph 15 of the FAC with respect to itself. SunRocket is without knowledge and information sufficient to form a belief as to the truth of the allegations as to the remaining defendants and therefore denies the same.

16. SunRocket denies the allegations contained in paragraph 16 of the FAC with respect to itself. SunRocket is without knowledge and information sufficient to form a belief as to the truth of the allegations as to the remaining defendants and therefore denies the same.

17. SunRocket denies the allegations contained in paragraph 17 of the FAC with respect to itself. SunRocket is without knowledge and information sufficient to form a belief as to the truth of the allegations as to the remaining defendants and therefore denies the same.

Count 2 For Patent Infringement (‘266 Patent)

18. SunRocket repeats and realleges its responses to the allegations contained in paragraphs 1-11 in its response to paragraph 18 of the FAC as if more fully set forth herein.

19. SunRocket denies the allegations contained in paragraph 19 of the FAC.

20. SunRocket is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the FAC and therefore denies the same.

21. SunRocket denies the allegations contained in paragraph 21 of the FAC with respect to itself. SunRocket is without knowledge and information sufficient to form a belief as to the truth of the allegations as to the remaining defendants and therefore denies the same.

22. SunRocket denies the allegations contained in paragraph 22 of the FAC with respect to itself. SunRocket is without knowledge and information sufficient to form a belief as to the truth of the allegations as to the remaining defendants and therefore denies the same.

23. SunRocket denies the allegations contained in paragraph 23 of the FAC with respect to itself. SunRocket is without knowledge and information sufficient to form a belief as to the truth of the allegations as to the remaining defendants and therefore denies the same.

24. Web Telephony’s jury demand is not an allegation under FED. R. CIV. P. 8(a) that requires a response.

AFFIRMATIVE DEFENSES

25. SunRocket alleges the following defenses in response to Web Telephony's claims, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein.

26. SunRocket has not infringed, directly or indirectly, any valid claim of the '694 or '266 Patents.

27. One or more claims of the '694 and/or '266 Patents are invalid for failure to comply with one or more provisions of 35 U.S.C. §§ 102, 103 and 112.

28. The '694 and '266 Patents are unenforceable because of inequitable conduct by the named inventor and other associated with him during the prosecution of the patents before the USPTO.

29. Web Telephony's claims are barred by the doctrines of waiver, laches, estoppel, unclean hands, and any other equitable defense.

30. Web Telephony is not entitled to injunctive relief because it has an adequate remedy at law.

31. On information and belief, the Complaint and demand for relief are barred, in whole or in part, by 35 U.S.C. § 287.

32. Web Telephony's claims are brought for the purpose of harassment and not in good faith. Consequently, this case should be found to be an exceptional case under 35 U.S.C. § 285 and SunRocket should be awarded its attorneys' fees and costs.

33. As SunRocket's investigation is ongoing and discovery has not yet begun, SunRocket reserves the right to assert additional affirmative defenses in accordance with the Court's scheduling order.

JURY DEMAND

In accordance with FED. R. CIV. P. 38(b), SunRocket hereby demands trial by jury on all triable issues.

WHEREFORE, SunRocket demands that plaintiff Web Telephony takes nothing by its FAC and that SunRocket be awarded its attorneys fees and costs, and any other relief deemed just by the Court.

Dated: June 18, 2007

Respectfully submitted,

GREENBERG TRAURIG, LLP

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ATTORNEYS FOR DEFENDANT SUNROCKET CORP.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of SunRocket's foregoing Answer to Web Telephony's First Amended Complaint was served by electronic service in compliance with Local Rule CV-5 to all counsel of record on this 18th day of June 2007.

/s/ Christopher M. Joe
Christopher M. Joe

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